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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Case No. 08-13555-jmp, 08-01420-jmp (SIPA)
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In the Matter of:
LEHMAN BROTHERS HOLDINGS, INC., et al.,
Debtors.
- - - - -x

In the Matter of:
LEHMAN BROTHERS, INC.,
Debtors.
- - - - -x

U.S. Bankruptcy Court
One Bowling Green
New York, New York

July 20, 2011
10:01 AM

B E F O R E:
HON. JAMES M. PECK
U.S. BANKRUPTCY JUDGE

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[Docket No. 18106] Debtors' Motion for Authorization to
Terminate and Settle or Reject Certain Prepetition Derivatives
Contracts with Trusts for which U.S. Bank National Association
Serves as Indenture Trustee and Related Relief

[Docket No. 17282] Debtors' Motion to Amend the Order
Establishing Procedures to (i) Restructure, (ii) Make New or
Additional Debt or Equity Investments in, and/or (iii) Enter
Into Settlements and Compromises in Connection with Existing
Real Estate Investments

[Docket No. 181221] Debtors' Motion for Authority to (i) Enter
into the Second Amended Joint Chapter 11 Plan Proposed by the
Lehman Creditors and the SunCal Trustee on Behalf of the SunCal
Involuntary Debtors in Eight of the SunCal Involuntary Debtors'
Cases; (ii) Enter into the Second Amended Joint Chapter 11 Plan
Proposed by the Lehman Lenders in Eleven of the SunCal
Voluntary Debtors' Cases; and (iii) Participate in any Auction
of the SunCal Debtors' Assets

[Docket No. 16259] Motion of Evangelical Christian Credit Union
for Relief from the Automatic Stay

1
2 [Docket No. 18306] Debtors' Motion for (i) Approval of
3 Stipulation and Order Regarding Chapter 11 Plans and (ii) Stay
4 of Related Discovery

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6 [Docket No. 18157] Motion of Joseph Arena, Roland Hansalik,
7 George Barclay Perry for an Order Modifying the Automatic Stay
8 to Allow Payment of a Judgment Under the Directors and Officers
9 Insurance Policies Issued to the Debtors

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11 [Docket No. 18033] Motion of Merrill Lynch Portfolio
12 Management, Inc. and Merrill Lynch Capital Services, Inc. to
13 Compel Specific Performance of Subordination Agreement Terms

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25 Transcribed by: Ellen S. Kolman

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P R O C E E D I N G S

THE COURT: Be seated please. Good morning.

MR. MILLER: Good morning, Your Honor.

THE COURT: Good morning, Mr. Miller.

MR. MILLER: Harvey Miller from Weil, Gotshal & Manges
on behalf of the debtors.

If Your Honor, please, may we start with the contested
matters? I believe that will allow --

THE COURT: That might allow people to leave.

MR. MILLER: Yes, Your Honor.

THE COURT: Good. Let's do that.

MR. MILLER: And it's going to be real hot today.

So, we would be starting, Your Honor, with item 5 on
the agenda which is the debtors' motion seeking approval of a
stipulation and proposed order dated June 30, 2011.

Given the history, Your Honor, of these highly
accentuated and articulated polar positions that have been
taken by different constituencies in these Chapter 11 cases,
one might easily have predicted that the events that have
produced the subject stipulation were unbelievable except for
the fact that they did occur.

As a result of an idea suggested by my partner, Lori
Fife, that germinate into a course of action on June 16th,
2011, over 150 attorneys, financial advisors, financial
institutions and others gathered in the offices of Weil to meet

1 with the debtors' representatives and their professionals in a
2 gigantic effort to try and reconcile the differences among
3 creditors and to achieve a consensus as to the principals to be
4 incorporated into a Chapter 11 plan for the debtors.

5 That initial summit meeting which began at 2 o'clock
6 in the afternoon, extended almost until 5 a.m. the next morning
7 as the debtors' representatives met with different
8 constituencies on a collective basis and then sequentially.
9 Over the course of the following weekend, there were extended
10 telephone conferences and discussions as to the negotiations
11 and positions that had been discussed during the summer
12 conference.

13 The meeting resumed as to many of the constituencies
14 on Monday, June 20 and for a period that consumed the following
15 ten days various meetings, telephone conferences, drafting
16 sessions and extended negotiations were pursued. These
17 included negotiations that the plan provisions involving the
18 treatment of various classes of claimants, plan support
19 agreements and revisions to the proposed disclosure statement,
20 all of which culminated in the filing of the proposed second
21 amended plan and disclosure statement dated June 29, 2011 that
22 was subsequently modified and revised in light of additional
23 comments received during the evening of June 30 and into the
24 morning of July 1st, 2011 when the debtors filed a revised
25 proposed second amended Chapter 11 plan and related disclosure

1 statement.

2 In connection with the filing, the debtors noted the
3 second amended plan has the support of claimants holding
4 approximately 100 billion dollars in claims and that 30 plan
5 support agreements have been executed in connection with that
6 plan.

7 During the hectic days and nights, attention also was
8 given to the status of the discovery protocol order dated April
9 14, 2011. That order established a schedule and procedures in
10 connection with discovery related to plan confirmation and
11 other issues relating to the debtors' plan and alternative
12 plans filed by creditors.

13 It contemplated a very extensive massive discovery
14 process with enormous search mechanics involving many
15 participants and as to which over 850 search requests had
16 already been received. Among the negotiating parties it was
17 agreed that such extended and costly discovery might become
18 academic assuming the successful prosecution of the debtors'
19 second amended plan and disclosure statement. The parties then
20 agreed subject to the terms and conditions of the plan support
21 agreements and other commitments that the discovery protocol
22 order should be suspended and discovery held in abeyance during
23 the parties -- among the parties for the proposed stipulation.
24 All of that was agreed to and the stipulation which is before
25 the Court resulted.

1 Under the terms of the stipulation, the debtors were
2 required to file this motion not later than five business days
3 after June 30, 2011. Pursuant to the stipulation, the
4 alternative Chapter 11 plans filed in these cases, one by the
5 ad hoc group of LBHI creditors and the other by what we
6 characterize as the nonconsolidation plan proponents will be
7 held in abeyance pending the prosecution of the debtors' second
8 amended plan and disclosure statement subject to the provisions
9 of the plan support agreements.

10 The parties of the stipulation have agreed to stay any
11 and all discovery currently pending against any of the other
12 parties to the stipulation pursuant to the discovery protocol
13 order and all obligations of parties to each other. To respond
14 to any discovery is stayed. And finally, that none of the
15 parties to the stipulation will commence any other discovery
16 against any other party relating to the debtors' second amended
17 plan and disclosure statement and each of the alternative
18 plans. However, if a party to the stipulation terminates a
19 plan support agreement in accordance with its terms, then that
20 party upon three business days notice may pursue any and all
21 discovery that would -- it would be entitled to under the
22 Federal Rules of Civil Procedure, the federal bankruptcy rules
23 of procedure or any other applicable rule, law or court order.
24 And nonterminating parties, likewise, may pursue any and all
25 such discovery against the terminating party.

1 The right to call a termination event under the
2 stipulation is fairly broad. Under paragraph 6, any creditor
3 party may declare a termination event if, A, a nonappeable
4 order denying approval of disclosure statement or confirmation
5 is entered or the plan does not become effective by March 31,
6 2012.

7 As pointed out -- I'm sorry; as pointed out in support
8 pleading filed by the ad hoc group of LBHI creditors, any
9 adverse change in the treatment of such claimants under the
10 second amended plan whether material or not may serve as a
11 termination event in the sole discretion and election of the
12 requisite majority of the particular holders.

13 Pursuant to paragraph 10 of the stipulation, if a
14 termination event has been declared before the approval of the
15 second amended disclosure statement, then the debtors agree to
16 adjournment of the Section 1125 hearing to a date that is at
17 least twenty-five days as to the termination event. The intent
18 is to give the alternative plan proponents the opportunity to
19 have their proposed plans considered and prosecuted.

20 If the termination event is subsequent to the approval
21 of the second amended disclosure statement and it's in the
22 process of solicitation, then the debtors are required to
23 request a determination of the court on not less than twenty-
24 five days notice that the termination event does not require
25 resolicitation before the debtors may proceed to a confirmation

1 hearing. And, of course, the terminating parties shall be
2 entitled to oppose such a motion.

3 If resolicitation is required, the debtors will
4 have -- continue to have the right to request sequencing of the
5 solicitation and confirmation process and the proponents of the
6 alternative plans may oppose such requested sequencing.

7 In connection with the motion, Your Honor, pleadings
8 have been filed on behalf of the ad hoc group of LBIH (sic)
9 creditors and the unsecured creditors' committee in support of
10 the instant motion.

11 In addition, there have been two responses filed; one
12 by Centerbridge Credit Advisors and another by Danske Bank, one
13 limited objection by PricewaterhouseCoopers AG (Zurich) and
14 three joinders relating to the response of Centerbridge Credit
15 Advisors and the limited objection of PricewaterhouseCoopers.

16 And point of fact, Your Honor, none of the responses,
17 however characterized, object to the relief requested by the
18 debtors and supported by the unsecured creditors' committee and
19 the ad hoc group of LBHI creditors.

20 Essentially, the responses of Centerbridge Credit
21 Advisors and Danske Bank and the limited objection of
22 PricewaterhouseCoopers on the nature of statements signaling or
23 outlining their respective dislikes and intended rejection of
24 the debtors' second amended Chapter 11 plan, I assume, it is to
25 alert the Court to what their respective positions may be in

1 connection with the confirmation of that plan. But the
2 statements and characterizations which are set forth in those
3 pleadings, Your Honor, are not germane or indeed relevant to
4 the consideration of the motion and the approval of a
5 stipulation and the entry of a proposed order. These
6 statements are superfluous and need not be addressed at this
7 hearing.

8 To accommodate the respondents and consistent with
9 extended discussions with the representatives of LBI (Europe),
10 LBIE, which is not a party to the stipulation or any plan
11 support agreement, the debtors have proposed an amendment to
12 the proposed -- original proposed order attached to the motion
13 to make it clear and unequivocal that the stipulation only
14 applies to the parties that have executed the stipulation. As
15 to nonparties to the extent appropriate and proper, such
16 parties are not precluded and may undertake discovery pursuant
17 to the Federal Rules of Civil Procedure, federal rules of
18 bankruptcy procedure and such other rules and orders that may
19 be applicable.

20 After meeting and conferring with the appropriate --
21 the person as to who the discovery is directed. In other
22 words -- and also, Your Honor, there's a -- one pleading refers
23 to targeted discovery and there is no preclusion on targeted
24 discovery by nonparties to the stipulation.

25 The objective of a meet and confer is to attempt to

1 establish an orderly process so that whatever discovery may be
2 pursued will be efficient, expeditious, and not duplicative.
3 The additional language proposed also provides that if the
4 parties are unable to agree, then discovery will occur as
5 determined by the Court.

6 The precise language of the amendment is, if I may,
7 Your Honor, "Order that nothing in this order shall impair the
8 rights of any party-in-interest other than a party to the
9 stipulation to seek discovery in accordance with the applicable
10 Federal Rules of Civil Procedure and federal rules of
11 bankruptcy procedure so long as the parties seeking discovery
12 meets and confers with the party on which the -- a discovery
13 request is to be served prior to serving the request and
14 subject to whatever additional requirements or procedures that
15 may be agreed to by the parties and/or ordered by the Court."

16 The events that occurred, Your Honor, during the first
17 two weeks of June are attributed to the dedication, diligence
18 and expertise of all parties who participated in the effort to
19 bring consensus to these extraordinary cases. As in all
20 things, it is not perfect but it is a major step forward in the
21 administration of these cases; a step that may save these cases
22 from the tremendous expense of voluminous and extensive
23 discovery. The cooperation of the parties and the willingness
24 to give up sleep and other activities to meet with the debtors
25 and their representatives is much appreciated.

1 It is the sincere hope of the debtors that the major
2 step forward will not be in vain but rather result in a
3 consensual plan for all the debtors that inures to the benefit
4 of all of the economic stakeholders and the parties-in-
5 interest.

6 The stipulation and order, Your Honor, is an integral
7 part of the process and it is respectfully requested that the
8 Court grant the motion and approve the stipulation and enter
9 the order as amended.

10 Finally, although the discovery protocol order has
11 against all the parties to the stipulation will be suspended,
12 the confidentiality provisions and agreements pursuant to the
13 protocol shall remain in full course in effect.

14 With that, Your Honor, the debtors request that the
15 motion be granted and the stipulation approved and the order
16 entered. Thank you, Your Honor, unless you have any questions.

17 THE COURT: Okay. I don't have any questions. Thank
18 you, Mr. Miller.

19 Mr. Dunne?

20 MR. DUNNE: Good morning, Your Honor. For the record,
21 Dennis Dunne from Milbank, Tweed, Hadley & McCloy on behalf of
22 the official creditors' committee. And I'll be brief.

23 I echo Mr. Miller's comments and congratulate all the
24 parties on the effort that they put in and success that was
25 actually obtained as a result of those weeks of seemingly

1 endless negotiations.

2 The committee is very pleased that we've been able to
3 achieve so much progress over the past month and we have
4 garnered significant support among various creditor groups.

5 Prior to entering in the negotiations, the creditors'
6 committee was hoping to achieve two objectives. One was to get
7 broader creditor support for the plan but to also do so without
8 abandoning the elements, the key framework components of the
9 existing plan in terms of where we believed the litigation
10 probable outcomes were with respect to the various legal issues
11 presenting -- presented to the Court and all the parties. And
12 I believe we've done that. We have a consensual plan that does
13 not abandon the pillars of the plan and that we've managed to
14 retain the support of the parties that supported the previous
15 plan even though directionally some of the concessions moved
16 away from the them, frankly, and get support from creditors at
17 the domestic operating company levels that we did not have
18 before. We worked closely with the debtors and the creditor
19 groups to attain that support within the original framework.

20 One note; while we have made substantial progress on
21 the plan, and I think there was a number of us that were
22 surprised that we made so much of it so soon and I think that
23 is a credit to all the parties who participated, there is more
24 wood to chop.

25 We have more discussions to come with the foreign

1 affiliates, with LBI, and even some of the domestic creditors.
2 But hopefully, we can build on the substantial progress that
3 we've made to date and get even broader buy-in to the plan as
4 we march towards confirmation.

5 So, in sum, the committee believes the most efficient
6 and economical path forward is for the Court to approve the
7 debtors' motion to suspend prosecution of the other competing
8 plans and to stay any related discovery. And with that, unless
9 the Court has any questions for the committee, I conclude my
10 remarks.

11 THE COURT: I don't have any questions for you either.

12 MR. SHORE: Good morning, Your Honor, Chris Shore from
13 White & Case on behalf of the ad hoc group.

14 THE COURT: Good morning.

15 MR. SHORE: I just have two comments.

16 First, we agree with Mr. Miller that this has not been
17 an easy plan negotiation given the capital structure. To say
18 that the debtors and their counsel have been herding cats is an
19 understatement. And when handing out credit from the group's
20 perspective, the debtors and their counsel have done a great
21 job in building consensus here and to some extent making
22 everyone a little unhappy. And I mean that in a good way.

23 We do note that the process of getting everybody in
24 the same room was made easier by the discovery framework which
25 was ordered by this Court and we agree with Mr. Miller that the

1 timing of the settlement and the launch of discovery were not
2 coincidental. The fact is that a substantial number of people
3 did get together in the same room and become convinced that on
4 the economics of this plan, peace was better than war.

5 My second point, though, is this is fragile piece as
6 we said in our papers and that the bargain has been struck is
7 literally down to single bases point recoveries within the
8 various groups. And based on our participation in the
9 negotiations, we feel confident that there really isn't any
10 more to give by any constituency. Notwithstanding the Court
11 has before it a few statements put forth by parties essentially
12 for the point that they think they deserve more, I'm going to
13 take the lead of Mr. Miller and not rise to debate and debate
14 any of that now; we could be here for hours.

15 I will, however, note, to say that if it's the party's
16 intention to start a war with the idea that they're going to be
17 getting more or that their treatment is unfair, from the
18 group's perspective we think they may be a little naïve in the
19 cost benefit analysis and we'd implore them to get on board on
20 this plan on these economics.

21 THE COURT: Okay. Before hearing from parties who
22 have filed responses with limited objections to the extent they
23 wish to be heard after the opening statements that have been
24 made by counsel for the debtor, the ad hoc committee, and the
25 committee, I just want to make a comment which is designed to

1 not chill presentations but to note that this is not an
2 opportunity to stand on a soap box and make statements about
3 positions that might be asserted at some future date in
4 connection with some future matter to be heard here whether
5 it's the disclosure statement itself or plan confirmation.

6 Everybody who has filed a response is free to comment
7 but limit those comments to the matter which is actually before
8 me which is the motion for approval of the stipulation and
9 order regarding plans and the stay of related discovery.
10 Merits types arguments that have been made in the papers really
11 have no place here. And so, say what you want to say about the
12 matter which is before me but please refrain from trying to
13 make headlines. Okay? I'll hear what people have to say.

14 MR. QURESHI: Good morning, Your Honor. For the
15 record, Abid Qureshi, Akin, Gump, Strauss, Hauer & Feld on
16 behalf of Centerbridge. I certainly don't intend to repeat
17 anything in our papers. I rise only to advise the Court that
18 we are okay with the language proposed in the debtors' reply
19 that reserves the right of those that continue to object to the
20 amended plan, to take discovery. We've been informed by the
21 debtors that they will confer with us in the ordinary course
22 and pursuant to the applicable federal rules. Thank you, Your
23 Honor.

24 THE COURT: Okay. Fine. Thank you. Is there anybody
25 who is dissatisfied with the language that has been proposed in

1 the amended order? Apparently not. Is there anyone else who
2 wishes to be heard with respect to the order as amended?

3 There's no response. The motion is approved.

4 MR. MILLER: Thank you, Your Honor.

5 The next motion, Your Honor, number 6, is Jones Day's
6 motion.

7 THE COURT: Those who wish to leave as a result of
8 having considered item number 5 may do so.

9 Let's just wait one moment while we allow the
10 courtroom to clear and people to sit down who might want to
11 find seats.

12 (Pause)

13 THE COURT: This demonstrates the wisdom of taking
14 item number 5 first.

15 MR. MILLER: Thank you, Your Honor.

16 MS. LAUKITIS: Good morning, Your Honor. Lisa
17 Laukitis from Jones Day on behalf of Roland Hansalik, George
18 Barclay Perry and Joseph Arena. The parties have moved for a
19 comfort order to permit payment of a judgment under the
20 debtors' D&O policies. I'm here today with my partner Philip
21 Cook. There is a pro hoc motion pending for Mr. Cook but we
22 would ask that he be authorized to make argument today and we
23 can hand up the order at the conclusion.

24 THE COURT: As far as I'm concerned, the pro hoc is
25 deemed granted. But with the change in our rules since July 1,

1 there's a 200 dollar check that has to be paid at some point.

2 MS. LAUKITIS: I don't --

3 THE COURT: It's a fairly steep price to speak but go
4 ahead and be my guest.

5 MS. LAUKITIS: Mr. Cook is worth every penny, I assure
6 you.

7 THE COURT: Well, let's find out.

8 UNIDENTIFIED SPEAKER: Does that take care of the debt
9 limit, Your Honor?

10 MR. COOK: Thank you, Your Honor. I appreciate it.
11 With that, we are here on a motion for a comfort order. As the
12 Court knows, you know, seven prior comfort orders have been
13 entered. And our view, as we set forth in our motion is that
14 while the cases support the fact that the proceeds of the D&O
15 policy -- while the policies themselves may be the assets of
16 the estate, the proceeds are not and particularly under the
17 circumstances here where entity coverage has been deleted from
18 the policy and there is no evidence of an indemnity obligation
19 under part B. As the estate has stated on many occasions prior
20 and with their support here, we'd ask that the Court grant the
21 motion to permit the insurance companies to make the payment
22 for the current legal obligation.

23 THE COURT: Let me just ask a very basic question.
24 This is, as you have styled it, a comfort order. Is this
25 something that the insurance company has requested as a

1 condition to making the fifteen million dollar payment under
2 the FINRA award or is this something that the parties
3 themselves have determined is appropriate practice under the
4 circumstances because of reasoned doubt as to whether or not it
5 would be appropriate to make the payment, absent the entry of
6 an order?

7 MR. COOK: I am here representing three insured
8 persons.

9 THE COURT: I understand that.

10 MR. COOK: And it is -- it is, from our view, has been
11 the practice from the outset of the estate and those involved
12 in these proceedings to seek a comfort order. The cases
13 generally do hold, particularly under the facts here that these
14 proceeds are not assets of the estate and the estate has
15 consistently taken that position. However, because of other
16 issues, I think I would answer the Court's question about the
17 insurance companies' position somewhat precisely. They have
18 recognized it is and has been the practice here.

19 I don't think either the moving parties or the
20 insurers believe that the Court has jurisdiction over those and
21 that's why the motion has been styled and argued as it has;
22 that to the extent applicable and necessary, to the extent that
23 these proceeds are assets of the estate, we're seeking a
24 comfort order which will permit them to then pay without
25 concern that they're violating the automatic stay. There are

1 cases that have held -- although I believe under different
2 factual circumstances -- that the estate may have an interest
3 in insurance policy proceeds.

4 THE COURT: Okay. Thank you.

5 MR. DAVIDSON: Good morning, Your Honor. Steven
6 Davidson with Steptoe & Johnson and my partner Evan Glassman.
7 We represent the claimant in the underlying case U.S. Airways
8 and we support the motion and are here if you have any
9 questions of us. Thank you.

10 THE COURT: I don't.

11 MS. MARCUS: Good morning, Your Honor. Jacqueline
12 Marcus, Weil Gotshal & Manges on behalf of LBHI and its
13 affiliated debtors. As indicated in our statement in support,
14 Your Honor, we too support the requested relief.

15 THE COURT: Okay.

16 MR. O'DONNELL: Your Honor, Dennis O'Donnell, Milbank,
17 Tweed, Hadley & McCloy on behalf of the committee. We also
18 don't have any objections to the relief requested in the
19 motion. We've noted, as we've noted in the past, that we do
20 reserve our rights with respect to some potential time in the
21 future where the facts might change and the estate might have
22 an interest in these proceeds but agree that, at this point in
23 time, that's a purely speculative interest and we don't have an
24 interest in these proceeds.

25 THE COURT: Okay. Is anybody here from New Jersey?

1 MR. DAVIDOFF: Yes, Your Honor. Merrill Davidoff from
2 Berger & Montague. I'll try to be brief, Your Honor, and not
3 repeat anything that was said in our papers but I would like to
4 supplement the objections that we made with a few observations.

5 There has been no demonstration of the background of
6 this FINRA judgment whatsoever made by the insureds here or by
7 the insurers. We see that a proceeding was instituted in
8 December of 2009. There's no basis for coverage, why is that
9 covered by either the 2007/2008 policy year or the 2008/2009
10 policy year. So there's no demonstration of coverage for this
11 at all.

12 There's no demonstration -- no linkage of the
13 allegations, no demonstration of what was alleged in the FINRA
14 matter and why that should be subject to coverage. The
15 respondents of the movants made the point that New Jersey has
16 acquiesced in prior attempts to tap the policy, mostly for
17 defense costs and for some settlements. But that situation has
18 drastically changed. These policies have been severely
19 depleted.

20 I don't know whether Your Honor received the papers
21 that we sent in yesterday afternoon. We sent a courtesy copy
22 down to Your Honor's chambers when we filed them. But the
23 background of this is that twenty-eight approximately or more
24 opt-out actions have been stayed by motions to dismiss the
25 class actions have been pending. And these policies have been

1 steadily depleted, mostly to pay defense costs and now to pay a
2 rather sizable settlement.

3 And I'd also like to note our objection -- strenuous
4 objection to the effort to wave the fourteen-day appeal period.
5 We should be given an opportunity to try to put this before the
6 District Court that stayed all of these actions, including New
7 Jersey's action which was forcibly -- forcibly hauled into the
8 MDL in the Southern District of New York, an attempt to put
9 that. And the attempt to waive the fourteen-day appeal period
10 really is an attempt to trample on and extinguish our appeal
11 rights.

12 I would note that it was over a month from the time
13 that the FINRA judgment was entered in June until the movants
14 actually moved for relief from the automatic stay. They
15 received an extension from the claimants, they received an
16 extension from FINRA. No reason to believe they couldn't
17 receive a similar extension of appellate proceedings were
18 pending in the District Court. The fourteen-day appeal period
19 is very short.

20 So I would urge Your Honor to inquire a little more
21 deeply into this before even considering granting the motion.
22 What is the background of the FINRA judgment, when was it
23 asserted, why is there coverage under the FINRA judgment for
24 this and, if Your Honor determines that the motion should be
25 granted, Your Honor should not -- should strike out, at the

1 very least, the portion that waives the appeal period to give
2 the objectors and opportunity to perfect an appeal and get it
3 before the District Court that has back-burnered all of the
4 cases, including New Jersey which lost almost 200 million
5 dollars on Lehman securities, that's back-burnered all of those
6 cases pending disposition of motions directed to the class
7 action.

8 There is an automatic stay for the class action cases.
9 There is no automatic stay for opt-out cases. It was a
10 procedural device that was entered by Judge Kaplan. We also
11 attached as Exhibit 7, if I could call Your Honor's attention
12 just to some language. This was another effort about a year
13 and a half ago by the class claimants to get discovery and
14 that's Exhibit 7 to the papers we filed yesterday. And in that
15 opinion, explaining why he would not -- I don't meant the
16 automatic stay; I mean the stay that judge Kaplan had entered
17 in the PSLRA stay. He distinguished the Worldcom case and
18 analogized the Lehman case to the Revco Securities litigation.

19 And among other things, he say this is a December
20 11th, 2009 order by Judge Kaplan, right around the time,
21 incidentally, that U.S. Airways was filing its initial claim in
22 the FINRA proceeding. "The facts here are akin instead to In
23 re: Revco Securities litigation and like cases. Here, unlike
24 Worldcom but like Revco, there are no court-ordered settlement
25 discussions. Similarly, lead plaintiffs have not demonstrated

1 a risk critical to the outcome in Worldcom that the defendants,
2 as opposed to nonparty Lehman, will be insolvent if discovery
3 is delayed until after the motion to dismiss currently sub
4 judice is decided," And denied the motions to lift the PSLRA
5 discovery stay.

6 That situation has drastically changed. At the very
7 least, we should have an opportunity to put this -- to seek to
8 put this before Judge Kaplan on appeal and I urge Your Honor,
9 if he -- in the event that Your Honor does grant the motion,
10 not to grant the portion of the motion that seeks waiver from
11 the fourteen-day appeal period.

12 THE COURT: I have two --

13 MR. DAVIDOFF: Thank you, Your Honor.

14 THE COURT: -- questions for you.

15 MR. DAVIDOFF: Yes, Your Honor.

16 THE COURT: The first relates to your standing to
17 object. There are arguments that I have read in the papers
18 indicating that, under applicable New York law, a party such as
19 the State of New Jersey that is simply waiting in the wings,
20 really can't complain about insurance proceeds going to the
21 first claimant that gets a judgment. So question number one is
22 what standing do you have to complain in the first instance?
23 Question number two is what have you done between your first
24 knowledge of the FINRA preceding and today to go before Judge
25 Kaplan and seek relief?

1 MR. DAVIDOFF: Well, the answer is we have not yet
2 sought relief from Judge Kaplan --

3 THE COURT: Why not?

4 MR. DAVIDOFF: That's -- that's a good question, Your
5 Honor, but I think we were focus, having only become aware of
6 this pretty much at the last minute, we were focused on filing
7 our objection before Your Honor and then we -- our intention
8 was present our position before Your Honor and then seek relief
9 in the District Court, preferably before Judge Kaplan if it
10 would be accepted as a related matter.

11 But I think Your Honor asks a good question. Perhaps
12 we should have done that simultaneously, in hindsight, given
13 Your Honor's question. But we certainly intend to do that. I
14 am aware of cases under New York law that hold that, you know,
15 it's basically first come, first served but I think what's
16 happened here is a number of cases have been back-burnered and
17 I don't know why there was no effort to seek a stay of the
18 FINRA proceedings.

19 I'd also argue that these policies are not merely
20 proceeds, they're policies; they were purchased by Lehman. And
21 I'm aware of the split in the authorities but I think the
22 weight of the authority is that these are property of the
23 estate and relief from the automatic stay is needed. And under
24 105(a), Your Honor has the discretion, Your Honor has the
25 authority to enter such orders as are equitable, irrespective

1 of the ordinary rule where, you know, there isn't a bankruptcy
2 proceeding.

3 THE COURT: Can you explain why the State of New
4 Jersey acquiesced during each of the earlier occasions when
5 comfort orders were sought, with respect to settlements and the
6 use of proceeds to advance defense costs to officers and
7 directors and others who are entitled to coverage under these
8 various policies?

9 MR. DAVIDOFF: I can answer as to the one occasion
10 where we affirmatively acquiesced by signing onto a stipulation
11 because I was involved in those discussions, Your Honor. We
12 felt it was inequitable, even though we were adversaries of
13 these insureds, for them to be deprived of funds for their
14 defense costs so we acquiesced, reserving our rights, in a
15 stipulation -- and I don't have that stipulation before me. It
16 was quite some time ago -- for defense costs to be advanced.
17 And we didn't object on some prior occasions but we have
18 objected on this occasion and -- to put the matter first before
19 Your Honor and, depending on the outcome here, before the
20 District Court.

21 So I think at this point, one thing that the movants
22 and the insurers have not disclosed is how much of these
23 policies have been depleted and why is this FINRA claim, which
24 was filed in December of '09, in either the '07/'08 tranche of
25 policies to the '08/'09 tranche of policies? I don't

1 understand that. Was the claim asserted earlier? Why is there
2 coverage? I mean, there has been the sparsest showing, maybe
3 no showing. And I recognize that we're a lonely objector and a
4 lonely voice objecting and, you know, it's not fun to be --
5 it's not fun to be the guy in the corner but I think something
6 has to be done here or these policies will be completely
7 depleted before any of the opt-out cases have an opportunity to
8 reduce their claims to judgment.

9 THE COURT: All right.

10 MR. DAVIDOFF: Thank you, Your Honor.

11 THE COURT: Mr. Etkin, do you have a dog in this
12 fight?

13 MR. ETKIN: We did file a reservation of rights, Your
14 Honor. We did not object to the motion because, dating back to
15 the first of these types of motions where comfort orders were
16 sought from the Court, we were involved in the crafting of the
17 language that made sure that there was no determination that
18 the stay was, in fact, applicable and reserved on the issue of
19 whether the proceeds were property of the estate, rather than
20 have that issue determined because we didn't believe, nor did
21 the movants or the debtor believe, at the time, that that
22 determination was necessary.

23 We have a view that the proceeds are not property of
24 the state, the same view as expressed to you by the movant, the
25 debtor and, to some extent, the committee. But rather than get

1 into hat issue, we didn't feel it was necessary so long as the
2 order carved that out. We filed the reservation of rights
3 because the debtor had filed papers indicating that there would
4 be some changes to the order that were not identified in the
5 papers so we wanted to make sure that whatever order was
6 ultimately presented to Your Honor reflected those same terms
7 that are contained in the prior orders that Your Honor signed
8 as to those issues that were significant to us.

9 I should state, and I probably didn't state for the
10 record, that we represent the institutional lead plaintiffs and
11 the securities class actions. Like Mr. Davidoff, we too are
12 obviously concerned about the burn rate with respect to the
13 policies. But, frankly, we did not object because of the
14 history of orders that have been entered and the issues that
15 have already been raised. And we've looked at the revised
16 order and it contains the language that we've seen in the prior
17 orders so we have no -- we have no objection.

18 We also filed a reservation of rights because, to the
19 extent that the Court would entertain the -- a determination on
20 the issue at this juncture which, again, we don't believe is
21 necessary, that the proceeds are or are not property of the
22 estate. And we believe that additional briefing would be
23 necessary and additional argument would be necessary. So we
24 wanted to reserve those rights as well.

25 THE COURT: But as to the relief that's being sought

1 today in the motion, at least in respect to the form of order
2 that you have reviewed, you have no objection to the entry of
3 that order?

4 MR. ETKIN: That's correct, Your Honor.

5 THE COURT: All right. Thank you.

6 MR. COOK: Your Honor, just very briefly in response
7 to the comments of counsel from New Jersey. The motion
8 expressly states that we're not asking the Court to make any
9 determination as to the rights to coverage, to become involved
10 in whether the insurance companies have defenses. The order
11 that we sought simply is one that provides comfort to the
12 insurance companies that payment of policy proceeds will not
13 violate the automatic stay.

14 We have shown that, under New York law, we have a
15 contractual right to those policy proceeds. The insurance
16 companies have not articulated, as we state in the motion, any
17 defense to payment or to those contractual rights. And we've
18 shown that by August 3rd, if those -- if the award is not paid,
19 the award that was entered by FINRA on March 27th, there will
20 be significant prejudice to the three insured persons who've
21 moved for this order.

22 And I believe Judge Gonzalez, in the Enron case --
23 there's a bench ruling that was attached to the Zurich motion;
24 we've referenced that in our motion. And he makes clear that
25 in making a decision about whether to enter a similar order, in

1 finding that the proceeds are not the assets of the estate.
2 That it's not his purview to change the contractual rights of
3 the parties but to merely make a much more limited decision as
4 to whether or not it would violate the terms of the automatic
5 stay to provide and order allowing the insurance payment.

6 THE COURT: Okay.

7 MR. COOK: Thank you.

8 THE COURT: Is there anything more on this?

9 MR. DAVIDOFF: I have one sentence, if I may be
10 permitted, Your Honor.

11 THE COURT: Well, you're going to have to come to the
12 podium to express it.

13 MR. DAVIDOFF: I'm sorry, Your Honor. I just would
14 note for the record that New Jersey disputes the assertion that
15 the claimants have shown that there's prejudice and that the
16 August 3rd deadline, like the prior deadlines, could not be
17 further extended or that there would be penalties imposed in
18 the event the Court were not to lift the automatic stay by that
19 time.

20 THE COURT: I don't understand what you just said.

21 MR. DAVIDOFF: The -- I'm sorry, Your Honor. Counsel
22 said the award was entered by FINRA on March 27th. There was a
23 substantial delay in seeking relief from the automatic stay.
24 There were extensions granted by FINRA. If the Court were to
25 refuse to lift the automatic stay, there's not showing that

1 there would be any automatic levying of penalties against the
2 insured who are seeking recompense from the policy and there's
3 no showing that there would be any further prejudice. U.S.
4 Airways would have to stand in line, like other claimants who
5 are equally deserving or more deserving than U.S. Airways.
6 That was the point I was making. I don't think the papers
7 sufficiently demonstrate prejudice and I wanted to note our
8 position on that.

9 MR. COOK: Just a quick point of clarification. I
10 apologize for misspeaking. I believe it was pointed out to me
11 I said March 27th. Exhibit B, which we have filed to our
12 motion, is a copy of the FINRA award. It was entered on May
13 27th. The first opportunity we had to make the motion after
14 the delivery of that award was on our -- for this omnibus
15 hearing and we filed our motion on June 29th. I am assured --
16 and counsel for U.S. Airways is here and can assure the
17 Court -- there will be no further delay beyond the arrangement
18 that we have with FINRA and with U.S. Airways to get this paid
19 by early August and the only reason for that concession was so
20 that we could come here and obtain the comfort order.

21 THE COURT: Okay. Now we'll hear from U.S. Airways
22 counsel.

23 MR. DAVIDSON: Just very briefly, Your Honor, to
24 underscore the point that we have agreed to this extension to
25 allow this process to run its course but if the payment is not

1 forthcoming from the insurance policy, we will then seek to
2 enforce our award against the three individual respondents
3 through whatever means we can. So that's why we're here today
4 and have agreed to the extension with FINRA and counsel for
5 respondents.

6 THE COURT: Okay.

7 MR. DAVIDSON: Thank you.

8 THE COURT: Mr. Davidoff's throw away lines and the
9 end of the presentation prompted two comments that emphasize
10 that there is actual prejudice to the clients that have moved
11 for what amounts to a comfort order. These individuals Joseph
12 Arena, Roland Hansalik and George Barclay Perry are seeking a
13 comfort order to permit insurance proceeds to be utilized to
14 satisfy a fifteen million dollar award in an arbitration that
15 was conducted under the FINRA rules in which U.S. Airways was
16 the successful claimant. I have actually reviewed the FINRA
17 arbitration award which was submitted to my chambers in time
18 for my review of people coming out here today. And it appears
19 to be a legitimate copy of that arbitration judgment.

20 The State of New Jersey, through counsel, is the only
21 party objecting to what has become a fairly standard protocol
22 in these cases and in other large Chapter 11 cases, mainly
23 coming before the Court to obtain an order permitting insurance
24 proceeds to be used for the advance of defense costs or to
25 satisfy settlements or judgments in connection with individuals

1 who are covered under officers and directors policies.

2 I don't need to decide the ultimate question which is
3 embedded in a motion of this sort which is whether or not these
4 proceeds are or are not property of the estate. There seems to
5 be a general recognition on the part of those parties who have
6 moved for relief as well as on the part of -- that Mr. Etkin,
7 who spoke on behalf of the lead plaintiffs, that we're probably
8 not dealing with the property of the estate. We are dealing,
9 however, with what he claimant's view as a wasting asset
10 because the policy limits in question are being used over time
11 to satisfy the needs of those who come ahead of others in the
12 queue.

13 The State of New Jersey, through its papers and in the
14 presentation just made by its counsel, tells a story of having
15 wasted time in an appellate process in the Third Circuit and
16 then being subjected to a stay in the District Court up the
17 street in which Judge Kaplan is managing multidistrict
18 litigation. That's not my problem. The fact that the State of
19 New Jersey is but one representative of what I assume to be a
20 whole host of third parties who may have claims that may
21 someday rise to the level of a claim that could be a claim
22 against proceeds of an insurance policy, is the rankest of
23 speculation in terms of having a right to these proceeds today.

24 The case authority presented in the motion and in some
25 of the supporting papers makes clear that, under applicable New

1 York law, this is a first come, first served issue. In fact,
2 it promotes a race to judgment. But that's what the law is.
3 The fact that the State of New Jersey may be waiting in the
4 wings with a claim that may not be subject to applicable
5 insurance coverage is a regrettable fact of life. I question
6 whether or not New Jersey has actual standing under these
7 circumstances to appeal this judgment and I certainly question
8 whether or not there's the ability to somehow get this before
9 Judge Kaplan as a related matter. But they're free to do so.
10 I'll enter the order.

11 MR. MILLER: Thank you, Your Honor.

12 THE COURT: Thank you.

13 MS. MARCUS: Item 7 on the agenda, Your Honor, is the
14 motion of Merrill Lynch Portfolio Management, Inc and Merrill
15 Lynch Capital Services, Inc. to compel specific performance of
16 subordination agreement. Mr. Barrett, I believe, will handle
17 that, initially.

18 MR. BARRETT: Good morning, Your Honor. Peter Barrett
19 from Kutak Rock on behalf of Merrill Lynch Portfolio
20 Management, Inc. and Merrill Lynch Capital Services, Inc.
21 Merrill Lynch entities have moved under 105 to compel the
22 debtors to comply with the terms of the so ordered stipulation
23 that's been entered in this case as well as the subordination
24 agreement between the parties. I think initially, if it's okay
25 with Your Honor, there's a couple of housekeeping matters that

1 I think may streamline the presentations.

2 First, based on the responses of the debtors and the
3 SIPA trustee, we will not be pursuing any sort of relief and
4 can confirm that we are not seeking a relief against LBI or the
5 SIPA trustee. Second, of the purposes of this motion, Merrill
6 Lynch withdraws any request for tax and costs against the
7 estates or attorneys' fees. And third, just to point out that
8 Merrill is not taking the position that any ruling on this
9 matter would prejudice the debtors or the committees with
10 regard to the other four properties that are part of this
11 entire transaction dealing with AHF. A relief here will not
12 affect their rights. We don't have relief from stay on those
13 properties. We have not asked for their consent under the
14 subordination agreement and they have no duty to provide that
15 or to provide evidence of that consent.

16 So, with that out of the way, what we're asking the
17 Court to do is to direct the debtors to comply with the
18 subordination agreement and the so ordered stipulation.
19 Resolution of this motion now, we believe and we assert, will
20 benefit the estates. We don't believe that any parties,
21 including Merrill or the estates, would benefit from prolonged
22 litigations. Any proceeds of the sale of this project that
23 we're seeking, the Brampton project, are going to flow to
24 Merrill. Merrill has over sixty-one million dollars in
25 principle balance outstanding on its bonds. The most that

1 we're likely to get for this property is ten million dollars.

2 THE COURT: Can I stop you for a second?

3 MR. BARRETT: Yes.

4 THE COURT: As I read the papers filed in opposition
5 to your motion -- and I think it would be good to deal with
6 some of these issues -- there's a threshold question as to
7 whether or not procedurally you can do this by motion instead
8 of by adversary proceeding because you're seeking what amounts
9 to a mandate of the court which is generally only available
10 on -- by bringing an adversarial proceeding. So I'd like you to
11 comment on the procedural question.

12 Secondly, as we have discussed during the course of a
13 telephone conference, which I believe you participated in and
14 helped arrange several weeks ago --

15 MR. BARRETT: Yes, Your Honor.

16 THE COURT: -- I reviewed the subordination agreement
17 and, even before seeing the debtors' papers, had questions as
18 to whether or not, as a substantive matter, you were entitled
19 to relief in the first instance. I'd like you to comment as to
20 why you're entitled to any relief. And finally, why are you
21 here as opposed to being in a state court in Florida which is
22 best equipped to deal with the applications under Florida real
23 property law.

24 MR. BARRETT: Your Honor, I'll address all of those.
25 First, the procedural issue. Yes. I am completely aware of

1 the requirements of 7001. However, in this instance, we are
2 asking the Court, as a natural extension of it's so order
3 stipulation that was just entered, to direct the debtors to
4 comply with that. We don't believe that there's any prejudice
5 to the debtors in this instance. We also don't believe there's
6 any sort of due process violation.

7 Merrill is -- understands and is mindful of the status
8 of this case, the enormity of this Court's docket. We're
9 trying to streamline presentation and, in fact, both the
10 debtors and the committee have, in the past, used motions to
11 compel in order to streamline relief from this case. And the
12 debtors, they filed a motion to compel performance of Metavante
13 to comply with certain obligations. And the committee filed a
14 motion of the committee to direct the examiner to comply with
15 the Court's order. And just like Merrill in this case, they
16 were asking the Court for assistance in getting a party to the
17 case to comply with one of the Court's own orders. I
18 understand that two wrongs don't make a right but I would
19 assert and hope that three might suggest a custom in the case.

20 Going to the substantive --

21 THE COURT: Before you go to the next point --

22 MR. BARRETT: Yes?

23 THE COURT: -- I think there's a fundamental
24 distinction between seeking compliance with court orders that,
25 within their four corners, call for relief and seeking what

1 amounts to specific performance of a state law subordination
2 agreement which, on its face, is either obscure or, frankly,
3 can be read completely opposite from the interpretation you're
4 seeking. I read it as not providing for the relief that you
5 seek.

6 So for me to grant the relief that you seek, I would
7 need to conduct what amounts to a full evidentiary hearing in
8 the context of an adversary proceeding which included full
9 discovery. I'm not in a position to do what you seek because I
10 don't think you're entitled to that relief. Not only as a
11 matter of procedure but as a matter of substance. So you have
12 an almost impossible argument to make right now. What are you
13 going to say?

14 MR. BARRETT: Your Honor, I felt, coming in here,
15 based on the telephone conference that it would be an uphill
16 battle and I'm --

17 THE COURT: You're climbing a cliff.

18 MR. BARRETT: Exactly, Your Honor. And, Your Honor,
19 bullheaded or not, I'm happy to press on. But I --

20 THE COURT: It's up to you.

21 UNIDENTIFIED SPEAKER: I would -- Your Honor, I would
22 like to attempt to convince the Court otherwise and I
23 understand that it's a hard attempt but we -- you know, wrongly
24 or not, we do not see the subordination agreement the same way
25 the Court sees it, the same way the debtors see it.

1 THE COURT: But see, since that's how I see it, you
2 can't win. At least you can't win in this context.

3 MR. BARRETT: I -- no, I --

4 THE COURT: Both procedurally and substantively.

5 MR. BARRETT: I understand that and I can try to
6 convince you otherwise. I -- you know --

7 THE COURT: The words -- the words aren't there. I
8 don't --

9 MR. BARRETT: But the -- Your Honor --

10 THE COURT: The only way that's there is consent.

11 MR. BARRETT: No. No, no, no. The first word that is
12 there is consent. And it's -- what the -- whoops. What the
13 subordination agreement says is that the debtor -- that the
14 debtor shall consent to any relief that AHF asks for. What
15 they've asked for here is short sale. They want the debtors'
16 relief -- consent to a short sale. The only way you can
17 consent to a short sale is by providing releases. You can't
18 consent to a short sale by saying I consent. And by the way,
19 we've asked twice for their consent which they concede they
20 must give to us under the subordination agreement and we have
21 not get --

22 THE COURT: I think you're going to need a Florida
23 court or some other court that's familiar with documents of
24 this sort and with Florida real property law to agree with you
25 that consent, as you have sought to interpret it, means the

1 grant of a release.

2 MR. BARRETT: Well, Your Honor, the first sentence
3 says consent, but what the second sentence -- the sentence
4 below that -- says is that those subordinate lenders need to
5 "do, execute, acknowledge, and deliver to Merrill, every such
6 further acts, deeds, conveyance and instruments." And so, it's
7 not the first sentence. It's not the consent that gets us
8 through release.

9 It's that we ask for the consent; they have to give it
10 to us. Then we ask for evidence of that consent, and the
11 evidence of that consent is the release. And so, what Merrill
12 has put before the Court is a request from AHF to do a short
13 sale, and the position that the only way to consent to a short
14 sale is by delivering that release.

15 THE COURT: Regrettably, the transactional lawyer who
16 prepared this document either by design or through neglect and
17 oversight did not use the word "release".

18 MR. BARRETT: Well, Your Honor, and I think --
19 respectfully, I think that that somewhat --

20 THE COURT: The word "release" does not appear in the
21 document.

22 MR. BARRETT: Well, Your Honor, I don't think that you
23 need to state a litany of fifty things that you can do --

24 THE COURT: Lawyers do.

25 MR. BARRETT: Lawyers do, but you don't need to.

1 Lawyers can --

2 THE COURT: Lawyers could have said, "and it shall
3 release" --

4 MR. BARRETT: But, well, sir -

5 THE COURT: -- "upon a request of Merrill". It
6 doesn't say that.

7 MR. BARRETT: Certainly it doesn't say that, and in
8 hindsight, you are correct. In hindsight, I'm sure whoever the
9 deal lawyer is kicking themselves for the language they've
10 drafted. But drafting broad language and providing broad
11 relief doesn't mean that that language is ineffective. It
12 doesn't mean that if you say in a deed of trust or a mortgage
13 that this of yours, all other indebtedness, that you need to
14 list out all in hundreds of the other indebtedness. It applies
15 to everything. And here they've said, that you need to --
16 shall give any and all of these further acts, deeds,
17 conveyances. And that's what we're asking for, and we're
18 asking for them to comply.

19 THE COURT: Okay.

20 MR. BARRETT: I can tell you're convinced.

21 THE COURT: You're not getting that relief from me
22 today.

23 MR. BARRETT: I understand, Your Honor, but I
24 appreciate your time.

25 THE COURT: Okay. I don't know if the debtor wants to

1 say anything in response.

2 MS. MARCUS: Jacqueline Marcus, Your Honor, for the
3 debtors. You've made all of my arguments, so thank you for
4 that.

5 THE COURT: You're welcome.

6 MS. MARCUS: I just wanted to clarify a couple of
7 points regarding the language in the subordination agreement.

8 First, with all due respect to Mr. Barrett, he didn't
9 read the whole second sentence. The sentence that sets forth
10 the litany -- and I'll start in the middle -- "every such
11 further acts, deeds, conveyances, and instruments, as Merrill
12 or the trustee may request for the better assuring and
13 evidencing of the forgoing consent." And that's critical,
14 because that's the limiting factor.

15 Secondly, Your Honor noted that the section does not
16 mention the word "release". In fact, it does, but it mentions
17 it in a different context, and I think that leads to our firm
18 belief that people were thinking about releases. The next
19 sentence talks about the subordinate lenders consenting to and
20 authorizing the release by the senior lenders or the trustee of
21 all or any portion of the project from the lien operation, and
22 in fact, of the senior mortgage documents. So, within that
23 specific provision, the word "release" was mentioned. It
24 simply wasn't mentioned in connection with the subordinate
25 lenders.

1 For all the reasons you alluded to, Your Honor, we
2 request that the motion be denied.

3 THE COURT: The motion is denied.

4 MS. MARCUS: Thank you, Your Honor. Now, we turn back
5 to the beginning of the agenda to the uncontested portion.

6 Item number 1 on the agenda is the debtors' motion for
7 authorization to terminate and settle or reject certain pre-
8 petition derivatives contracts with trust for which U.S. Bank
9 National Association serves as indentured trustee and related
10 relief. As indicated on the agenda, Your Honor, this is a
11 uncontested motion. As the Court may recall, we filed a
12 similar motion back in December 2010, and the Court granted the
13 relief requested in that motion.

14 This motion is different in that it replies to
15 different types of derivatives contracts. In support of the
16 current motion, the debtors have declarations of Robert Hershan
17 of Alvarez & Marsal, and Michael Trickey of Berkshire Partners,
18 and the affidavit of David Duclos of U.S. Bank. Unless, the
19 Court has any questions, the debtors request that the Court
20 grant the relief requested in the motion, and enter the
21 proposed order.

22 THE COURT: I don't have any questions, although I'm
23 just going to ask if anybody on behalf of U.S. Bank National
24 Association wishes to say anything.

25 MR. PRICE: Your Honor, Craig Price, from Chapman and

1 Cutler. We're fine.

2 THE COURT: I'm not sure if you could be heard,
3 because of your distance from the microphone.

4 MR. PRICE: We have no comments.

5 THE COURT: Okay. I was offering you an opportunity
6 because I had read a recently filed affidavit suggesting that
7 there was some concern on the part of U.S. Bank that its
8 various beneficiaries and constituents be notified concerning
9 this course of conduct. And the docket will speak for itself.
10 Anybody who wants to go to the docket will be able to do that.

11 Can you come back --

12 MS. MARCUS: Craig?

13 THE COURT: -- and simply repeat your name for the
14 record. It didn't come through on the transcript.

15 MR. PRICE: Craig Price from Chapman and Cutler. We
16 have no comment.

17 THE COURT: Okay.

18 MS. MARCUS: Your Honor, I also might add that as set
19 forth in the -- I think it's in the affidavit of Mr. Duclos --
20 U.S. Bank did serve or did arrange to have -- I won't say
21 serve -- but did arrange to have copies of the motion provided
22 to the noteholders.

23 THE COURT: That's fine.

24 MS. MARCUS: Item number 2 on the agenda, Your Honor,
25 is the debtors' motion to amend the order establishing

1 procedures to restructure, make new or additional debt or
2 equity investments in, and/or enter into settlements and
3 compromises in connection with existing real estate
4 investments. This matter was originally scheduled to be heard
5 at the June 15th hearing. However, due to the fact that the
6 debtors were continuing to negotiate the terms of the revised
7 order with the ad hoc group, we adjourned the hearing to today.

8 Late yesterday, we agreed on the form of the proposed
9 order with the ad hoc group, and we filed a revised order last
10 night -- I apologize for the lateness of the hour -- together
11 with two blacklines: one that marked the proposed order
12 against the proposed order that we filed with the motion, and
13 one that marked the proposed order against the first amended
14 order. As a result of the resolution with the ad hoc group,
15 the motion is currently uncontested. For the convenience of
16 the Court and other parties, however, I thought it might make
17 sense to very briefly summarize the changes that were made --
18 the salient changes.

19 First, we have added a new category -- and Your Honor,
20 would you like a copy, or do you have the cleaner -- the
21 blackline?

22 THE COURT: I'll take a copy, sure. Thank you.

23 MS. MARCUS: First, we added a new category of
24 expenditures called "permitted expenditures", as to which the
25 debtors are permitted to expend funds without the need to

1 provide notice to any party or obtain approval from the Court.

2 Permitted expenditures are, basically, two categories,
3 with some subcategories. First, there are ordinary course
4 expenses required for the sound operation and management of a
5 property, and second there are protective advances that fall
6 into three categories. First, to cure a superior loan default
7 in an amount up to and including five million dollars; second,
8 for real estate taxes and insurance premiums, and thirdly for
9 nondiscretionary or emergency properly related purposes.

10 Based on the discussions with the ad hoc group and the
11 creditors' committee, we have further agreed: first, that the
12 protective advance to cure a superior loan default would be
13 limited to an individual payment of five million dollars, or
14 aggregate payments not in excess of five million dollars, with
15 respect to a particular property, over the proceeding six month
16 period. In the event that the cure payments for a superior
17 loan default aggregate more than five million over that six
18 month period, than they shall be treated as a new investment
19 and subject to the procedures and thresholds for new
20 investments under the order.

21 Second, we have agreed to include quarterly reporting
22 as to certain permitted expenditures, namely those protective
23 advances for nondiscretionary or emergency property-related
24 purposes exceeding five million dollars, made by the debtors
25 during the prior three months, as well as the aggregate of all

1 such protective advances made with respect to a particular
2 property if the aggregate exceed ten million dollars or any
3 multiple thereof. The form of the reporting is included in the
4 proposed order.

5 We have changed the references to market-to-market
6 carrying value, which were used throughout the order to reflect
7 how the debtors and the creditors committee have actually been
8 operating, which is to use estimated recovery value.
9 Calculations for purposes of the reporting requirements will be
10 based on the estimated recovery values as of December 31, 2010,
11 which had been agreed upon by the debtors and the creditors
12 committee.

13 Next, the debtors will no longer need Court approval
14 for new investments greater than five million but less than
15 twenty-five million in connection with existing real estate
16 investments with a value greater than a hundred million. That
17 provision was deleted because it was really superfluous, and
18 those investments were treated in other categories.

19 In connection with the reporting on new investments,
20 as provided in the first amended order, we have made two
21 modifications. The debtors will provide a range of value with
22 respect to the relevant property that is consistent with the
23 threshold set forth in the procedures, so that people can
24 monitor our compliance with the procedures. And rather than
25 including the city in which the property is located, the

1 debtors will identify the type of property using categories
2 consistent with those used by the debtors in their monthly
3 operating reports.

4 Finally, we have included the relevant defined terms
5 in the new order rather than cross-referencing the definitions
6 in the motion to make it easier for people to interpret the
7 order. And we have made it clear that the term "real estate
8 investment" may apply to situations in which the debtors own a
9 particular parcel of real estate or a loan, and whether the
10 debtors' investment is owned directly or through a joint
11 venture, in which the applicable debtor has an interest.

12 In view of the fact that the sole objection to the
13 motion has been consensually resolved, Your Honor, the debtors
14 request that the Court grant the motion and enter the revised
15 proposed order. I'm happy to answer any questions that you may
16 have.

17 THE COURT: I don't have any questions. I've reviewed
18 the papers, and I approve the motion.

19 MS. MARCUS: Thank you, Your Honor. The next item
20 will be handled by my partner, Alfredo Perez.

21 MR. PEREZ: Good morning, Your Honor, Alfredo Perez on
22 behalf of the debtors. Your Honor, the next motion is the
23 motion by the debtors to obtain approval to be able to
24 prosecute the various SunCal plans. We've been before the
25 Court on this, Your Honor, several times. There's no objection

1 this time, but I wanted to give the Court a little bit of a
2 status report of where we are, the dates, and the timing.

3 In essence, Your Honor, the debtors filed their
4 original plans in the SunCal cases in September of '09. Those
5 plans have been amended several times including as late as last
6 Friday, the third amended plans, which we filed on Monday. In
7 essence, Your Honor, those plans call for -- in both what I
8 with the trustee, and the voluntary cases, in call the trustee
9 cases, pursuant to which we have an agreement which don't have
10 an agreement with the debtors, but we've negotiated with the
11 creditors committee for either LCPI or LBHI or Lehman ALI, the
12 respective debtor, getting a conveyance of the property, a
13 release, and -- pursuant to that, we would pay for various
14 costs associated with funding the plan, in connection with --
15 and the purpose for this particular motion is because the
16 amounts that we had sought last time have increased.

17 So, in connection with the involuntary plans, which is
18 over 1.1 billion of debt and approximately 350 million of
19 value, the amounts that we're seeking are at up to 55 million
20 dollars. And with respect to the voluntary cases, in which we
21 have loans totaling about 700 million dollars, and there's
22 about 100 million dollars of value, approximately 22 million
23 dollars to fund.

24 Your Honor, the disclosure statement hearings are set
25 for this Friday, July 22nd; confirmation hearing is currently

1 scheduled for October 24th. So, there's on a fairly quick
2 track to get up -- there's significant discovery which may or
3 may not affect those deadlines. The only other thing Your
4 Honor, was that on June 8th, of this year, the Ninth Circuit
5 did have a -- conduct an oral argument with respect to the
6 initial motion that's been before this Court, as to the
7 applicability of the stay, and that is sub judice with the
8 Ninth Circuit since June of last year.

9 Your Honor, we received no objections. The creditors
10 committee had some comments to the form of the order we filed,
11 an amended form of order last night, really by means of
12 clarification. We did make one change. When we originally
13 filed this motion in June it was the second amended plan. Now,
14 we subsequently filed a third amended plan, so we've made those
15 types of correcting changes in the proposed form of order. But
16 other than that, Your Honor, I don't have anything further to
17 say.

18 THE COURT: There is one thing I noticed in the
19 proposed form of order. There's a provision that the committee
20 shall have consent rights with respect to aspects of this
21 process. That strikes me as unusual, and I'd like more
22 information on it.

23 MR. PEREZ: Yes, Your Honor. The -- to some extent,
24 they get consent rights on basically two things. They get
25 consent rights if we're going to exceed, for any reason, exceed

1 the caps or the amounts that we think are going to be involved.
2 And they also would get consent rights to the extent that there
3 are competing plans that are also on file. The competing plans
4 were posed to not allow us to credit bid for the assets. And
5 as the Court's aware, now we have -- we now have a Seventh
6 Circuit case which says you can't do that pursuant to a plan.
7 We have a Fifth and a Third Circuit case which say you can deny
8 credit bid rights. To the extent that for some reason -- and
9 we don't think it's go -- it's likely to happen, but to the
10 extent, for any reason, the debtors' plans are approved and the
11 voluntary debtors have filed plans for both the voluntary and
12 the involuntary cases. So they have, kind of, the same set of
13 plans that we have. To the extent those are approved and our
14 credit bid rights are taken away, the creditors' committee
15 would have consent rights with respect to the amounts that we
16 would bid at any auction with respect to those assets.

17 Those are really the only two circumstances and they
18 involve, you know, discretionary expenditure that we would have
19 to evaluate at the time, based on litigation risk and all of
20 the other various problems. And they've been an integral part
21 of the process. We've had a -- you know, we've had extensive
22 discussion, we had a mediation. The creditors' committee has
23 participated in all of the things and they've always been,
24 basically, at the table because this is a very high profile
25 and, you know, significant involvement for the Lehman estate.

1 THE COURT: This is a competing plan process in the
2 Central District of California. Are there any rules of the
3 game that have been established as to the management of that
4 process?

5 MR. PEREZ: Your Honor, there are -- I'm not quite
6 sure I know exactly what the Court is asking, but there are --
7 you know, there has been extensive pre-trial orders that are
8 entered, that have been entered with respect to the plan
9 process. There is ongoing discovery. There is, you know, as I
10 said, the -- this -- I guess, at least second hearing on the
11 amended disclosure statements is set for this Friday. There's
12 a voting deadline, there's a rejection deadline. So, there's a
13 process that's been planned out between now and the end of
14 October with respect to the plans, that is currently, you know,
15 still in effect as of this morning. And I guess will, you
16 know, going forward.

17 THE COURT: But as far as you know, these plans are
18 being promulgated on the same time table and are being proposed
19 to creditors at the same time?

20 MR. PEREZ: Exactly, Your Honor. They're both running
21 in parallel tracks. The hearing on Friday is on our amended
22 motion to approve the Lehman voluntary debtor plan, the Lehman
23 trustee plan as well as all of the SunCal debtor plans and
24 disclosure statements. So, yes, they're all running on the
25 same parallel track.

1 THE COURT: And I'm a little bit curious as to what
2 happened to the motion that was pending several months ago
3 seeking further intervention from this Court with respect to
4 alleged stay violations.

5 MR. PEREZ: Your Honor, there was a hearing held
6 before the California Bankruptcy Court in which the California
7 Bankruptcy Court entered an order which I believe was filed in
8 this case in which it -- in which -- and I don't want to
9 characterize the hearing, but as a result of that order, we
10 decided to withdraw our motion.

11 THE COURT: All right. So it was not the result of
12 any consensual understanding reached with the voluntary debtors
13 in the SunCal cases?

14 MR. PEREZ: Correct, Your Honor.

15 THE COURT: All right.

16 MR. PEREZ: It -- as a result of that, in abundance of
17 caution, we withdrew the motion.

18 THE COURT: And I realize that I'm treading in an area
19 here where I probably should stay away. But, is there any
20 process contemplated that might lead these highly litigated
21 cases to a consensual resolution as opposed to the rather
22 expensive path that you're on now, which is also fraught with
23 some risk and uncertainty?

24 MR. PEREZ: Your Honor, there was a mediation that
25 occurred that resolved some of the issues. I think that

1 mediation process, while not active, it continues. And I do
2 think that certainly from the standpoint of the debtor and the
3 committee I know, we are very hopeful that at some point there
4 will be a resolution that will resolve this and avoid, really,
5 the tremendous expense that's going to be incurred between now
6 and October 24th. There are currently, probably thirty
7 depositions that have been either noticed or we've been told
8 that they're going to be going forward, plus document
9 discovery. And so, there's very extensive litigation going on
10 in the -- in California.

11 THE COURT: All right, thank you.

12 MR. ODONNELL: Your Honor, Dennis O'Donnell, Milbank,
13 Tweed, Hadley & McCloy on behalf of the committee. Just to
14 reiterate what Mr. Perez said, the committee has, as you
15 probably know, we -- has well been integral to this process,
16 has been involved with the SunCal process for some time. And
17 the consent rights that are reflected in the order here are
18 consent rights that we've actually had all along. We had
19 consent rights to the prior plan amounts as well. And both the
20 debtors here and the debtors there understand that out, you
21 know, our involvement in consent and what happens out there is
22 important.

23 On the other point you raise, Your Honor, in terms of
24 consensual resolution, again, as I think Mr. Perez indicated,
25 we are a strong proponent at this point of finding some kind of

1 consensual solution here. Because as he indicated, the process
2 out there looks to be, you know, far from resolution. We do
3 have a confirmation hearing scheduled for October 24th; we have
4 side by side with that at this point a claims processor that
5 they have, in lieu of proceeding with their equitable
6 subordination complaints that have been subject of several
7 hearings here, that the SunCal debtors have commenced or filed
8 objections to our claims out there which essential mirror the
9 equitable subordination claims. And that process is now going
10 forward simultaneously. So, the, you know, the likely expense
11 and complications that could arise out of that dual process are
12 hard to predict at this time and if there's a way to resolve it
13 consensually, we have been urging the debtors to do so and have
14 also been speaking to other parties in the situation, hoping
15 that there is some way to get that done.

16 But in terms of the relief before the Court today, we
17 have no objection to it. We have been involved in diligencing
18 the amounts involved, that the debtors' proposed to pay under
19 the two plans and will be involved in any decision with respect
20 to bidding, if the debtors -- and we think it's an unlikely
21 prospect, but if the debtors are ultimately required to bid in
22 the event that the SunCal plans are confirmed, we will be
23 involved in determining whether it makes sense to bid and at
24 what level they should bid.

25 THE COURT: Okay, thank you.

1 MR. ODONNELL: Thank you, Your Honor.

2 THE COURT: This is approved.

3 MR. PEREZ: Thank you, Your Honor.

4 Your Honor, with respect to the Merrill motion, would
5 you like us to prepare and submit an order on that?

6 THE COURT: I think in the interest of good order, you
7 should.

8 MR. PEREZ: Thank you, Your Honor.

9 Your Honor, the next motion is Mr. Tillinghast's
10 motion, the ECCU.

11 MR. TILLINGHAST: Good morning, Your Honor. Edward
12 Tillinghast from Sheppard, Mullin on behalf of Evangelical
13 Christian Credit Union.

14 This is a motion to lift the stay in connection with
15 ECCU's first mortgage lien on a piece of property in Riverside,
16 California. The - we submitted in connection with the motion
17 an affidavit from Michael Bobbit (sic) on one of their
18 appraisals showing the value of the property was 2.38 million;
19 the amount of ECCU's lien is -- senior lien is 6.6 million.
20 The debtor initially opposed the motion. The committee joined
21 in the opposition and then subsequent to that, the debtor has
22 withdrawn their opposition. So we have an order, unless Your
23 Honor has questions, granting the motion.

24 THE COURT: It's now an opposed motion.

25 MR. TILLINGHAST: Right.

1 THE COURT: So I don't have any questions. Except --

2 MR. TILLINGHAST: May I approach --

3 THE COURT: -- except what happened?

4 MR. PEREZ: Your Honor, Alfredo Perez on behalf of the
5 debtors. Your Honor, this is one of the SunCal debtors,
6 Emerald (sic) -- and --

7 THE COURT: Right, I read the papers. And I'm
8 generally familiar with what's involved here.

9 MR. PEREZ: Generally, Your Honor, we decided that
10 we -- that it didn't make any sense to fight the issue of the
11 marshalling twice. So we're going to get -- we would have our
12 rights as a creditor on the property in California, our state
13 law rights to request marshalling and then we'll go to
14 California -- they haven't moved to lift the stay in
15 California. We thought it was premature for them to come here
16 to lift the stay. We're preserving all of our rights and when
17 and if they ever file a motion in California, we will make the
18 same arguments.

19 THE COURT: Is this property, in one form or another,
20 to be the subject of the pending SunCal cases or is it a
21 separate matter?

22 MR. PEREZ: I think it's a separate matter, Your
23 Honor. Yeah, it's separate.

24 THE COURT: It just happens to have the SunCal name
25 attached to it?

1 MR. PEREZ: Well, it's one of the voluntary debtors,
2 but it is a separate matter just like we have the Pool One
3 debtors which are also SunCal, but really run very differently.
4 But it is --

5 THE COURT: Is this not the subject of the voluntary
6 debtor joint plan or is it separate?

7 MR. PEREZ: It is separate. It's not the subject --

8 THE COURT: All right, understood. The motion is
9 granted as unopposed. Do you have a disk?

10 MR. TILLINGHAST: We can submit it -- I don't have one
11 with me, I'm sorry.

12 THE COURT: Well, as you probably know, a piece of
13 paper like this is not worth the paper it's written on.

14 MR. TILLINGHAST: I'll submit it to you, Your Honor.

15 MR. MILLER: That concludes the calendar, Your Honor.

16 THE COURT: Fine. We are adjourned until 2 o'clock.

17 IN UNISON: Thank you, Your Honor.

18 (Whereupon these proceedings were concluded at 11:22 AM)

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I N D E X

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C E R T I F I C A T I O N

I, Ellen S. Kolman, certify that the foregoing transcript is a
true and accurate record of the proceedings.

Ellen
Kolman

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